

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NINOTCHKA MANUS,

Plaintiff,

-against-

MAX PINCIONE,

Defendant.

23-CV-6149 (JGLC)

ORDER

JESSICA G. L. CLARKE, United States District Judge:

On July 17, 2023, this action was removed from the Supreme Court of the State of New York, New York County, by the Defendant, who is a citizen and resident of New York State. Notice of Removal (“Notice”) ¶ 14. Plaintiff is a citizen of Florida. Notice ¶ 13.

Defendant asserts that jurisdiction is proper by reason of diversity of citizenship, pursuant to Title 28, United States Code, Section § 1332(a). Notice ¶ 10.

Pursuant to Title 28, United States Code, Section 1441(a), a defendant may remove an action commenced in state court to a federal district court if the district court has original jurisdiction over the matter. If jurisdiction is predicated on diversity of citizenship, however, an action “may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2); *see Gibbons v. Bristol-Myers Squibb Co.*, 919 F.3d 699, 705 (2d Cir. 2019) (discussing the forum defendant rule). That is the case here, as Defendant is a citizen of New York, and Defendant appears to have been served in June 2023 prior to removal.

Under Second Circuit law, this “forum defendant rule” appears to be procedural and, thus, waivable. *See Handelsman v. Bedford Vill. Assocs. L.P.*, 213 F.3d 48, 50 n.2 (2d Cir. 2000); *Bailey v. Texas Co.*, 47 F.2d 153, 154-55 (2d Cir. 1931) (L. Hand, J.). *But see Hurt v.*

Dow Chem. Co., 963 F.2d 1142, 1144-45 (8th Cir. 1992) (holding that the rule is jurisdictional and may not be waived).

Accordingly, IT IS HEREBY ORDERED that if Plaintiff wishes to invoke Section 1441(b)(2), Plaintiff must file a motion by **August 16, 2023**. Defendant must file their opposition by **August 30, 2023**, and Plaintiff must file their reply by **September 6, 2023**. IT IS FURTHER ORDERED that Defendant's counsel must e-mail, fax or deliver by hand a copy of this Order to counsel for Plaintiff immediately upon receipt.

Dated: August 3, 2023
New York, New York

SO ORDERED.



JESSICA G. L. CLARKE
United States District Judge